



Los Jardines

Homeowners Association, Inc.

- Bylaws
- Declaration of Covenants,
Conditions and Restrictions
- Forms

**Bylaws
and
Declaration of
Covenants, Conditions
and Restrictions**

Los Jardines
Homeowners Association

**PROTECTIVE COVENANTS AND BYLAWS
IMPOSED UPON LOS JARDINES SUBDIVISION AND
LOS JARDINES HOMEOWNERS ASSOCIATION.
ALBUQUERQUE, NEW MEXICO**

THIS RESTATEMENT OF PROTECTIVE COVENANTS, IMPOSED UPON LOS JARDINES SUBDIVISION AND LOS JARDINES HOMEOWNERS ASSOCIATION, ALBUQUERQUE, NEW MEXICO is made as of July 1, 2004, by Los Jardines Homeowners Association, a New Mexico corporation, with respect to that certain real property situated in Bernalillo County, New Mexico and more particularly described as follows:

LOS JARDINES SUBDIVISION, as the same is shown on the replat thereof recorded in the Bernalillo County, New Mexico real estate records on December 20, 1999 in Book 99C page 341 et seq. as Document No. 1999-154869 (the "Plat").

This Declaration replaces and supersedes the Protective Covenants imposed upon Los Jardines Subdivision recorded May 18, 2000 at Book A-5, Page 8052.

It is hereby declared that all of the above described real property is subject to this Declaration which is for the purpose of creating and maintaining a residential development on the described real property and for the improvement and protection of the value, desirability and attractiveness of the described real property, with portions of the property being owned, operated and managed by the association of homeowners for the common benefit of the homeowners.

This Declaration shall run with the described real property and shall be binding upon and inure to the benefit of the Association and each Owner of the described real property or any part of it, and each successor in interest of the Association and any such Owner.

ARTICLE I
Definitions

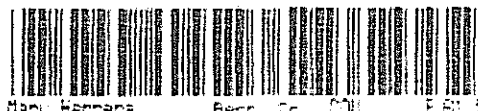
Unless the context otherwise specifies or requires, the terms defined in this Article I shall have the meanings assigned in this Article.

"Architectural Committee" or "Committee" shall mean the architectural control committee created pursuant to Article 9.

"Association" shall mean the Los Jardines Homeowners' Association, Inc., New Mexico nonprofit corporation described in Article 5 and any predecessor or successor organization, whether or not incorporated.

"Board of Directors" or "Board" shall mean the Board of Directors of the Association and the governing body of any predecessor or successor organization. The Board shall, in all matters related to the operation or management of the Association, act in the stead of the Association.

"Bylaws" shall mean the Bylaws of the Association adopted pursuant to the Articles of Incorporation of the Association and the New Mexico Nonprofit Corporation Act, Section 53-8-1 through 53-8-99, NMSA 1979.



Mary Herrera

Bern. Co. COU

F. 01. 96

2004105623
8119125
Page 1 of 27
67/28/2004 01:57P
61-981 Pg-3255

"Capitalized Terms" used in these Bylaws shall have the meanings assigned to such terms in this Declaration

"Common Area(s)" shall mean portions of the Subdivision, which have been or will be conveyed to the Association or portions of the Subdivision that are to be maintained by the Association. The Common Area(s) are identified on the Plat as follows:

Tracts A-1, B-1, C-1, D-1, E-1, F-1, I-1, K-1, L-1, M-1, N-1, O-1 and the area identified on the Plat as "the 3 ft. private Drainage easement granted to Los Jardines Homeowners Association by the plat and to be maintained by the "Homeowners' Association."

"Declaration" shall mean this Restatement of Protective Covenants Imposed upon Los Jardines Subdivision.

"Eligible Member" shall mean any Owner current in all assessments, fees and charges assessed against the Owners Lot. Unless otherwise indicated in this declaration, Member shall mean Eligible Member.

"Eligible Mortgagee" means any holder of a first mortgage lien against any Lot provided that such mortgagee has given the Association notice of its mortgage setting forth its name and address and identifying the Lot, by legal description and address, which is subject to such first mortgage.

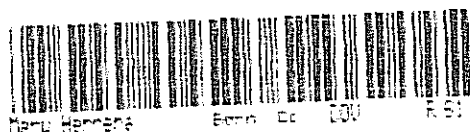
"Fiscal Year" shall be the calendar year.

"Home(s)" shall mean the attached single-family residential units constructed on the Lots.

"Improvements" shall include, without limitation, buildings, roads, driveways, parking areas, patio walls, subdivision exterior wall or fences, stairs, decks, with breaks, poles, antennas, signs, utility or communication installations (whether above or underground), affixed recreational equipment, and any structure and excavation of any type or kind. The term shall include Homes, unless the context otherwise requires.

"Landscape Area" shall mean certain real property located within the Subdivision owned by the public, including but not necessarily limited to the entrance to the Subdivision, the area between the Perimeter Wall and the City right of way along Indian School Road, the two (2) ft. wide strip of land between the Perimeter Wall and Rosales Drive N.W. and Claveles St. N.W. and the area East of the perimeter wall at the East end of Los Jardines Place all of which is or will be landscaped and maintained by the Association for the common enjoyment of the Association members.

"Lot" shall mean each of the eighty-six (86) Lots located within the Subdivision and shown on the Plat together with improvements located on each such Lot.



Mark Hanna

Form 10-100

R 51 88

2004/0502
6116166
Page 2 of 27
02/02/2004 01:57
02-001 Pg-0055

"Managing Agent" shall mean any professional agency or individual the Board of Directors may hire or engage to manage the day to day business of the Association.

"Mortgage" shall mean a deed of trust, as well as a mortgage, and the term "Mortgage" shall mean a beneficiary under or a holder of a deed of trust, as well as a mortgagee.

"Office" The office of the Association shall be located within Bernalillo County, New Mexico at a location designated by the Board of Directors.

"Owner" shall mean the persons or entities holding the beneficial ownership of the fee, including the purchaser under a real estate contract and shall not include persons holding only a security interest or a seller under a real estate contract. For the purposes of Article 3, unless the context otherwise requires, "Owner" shall include the family, invitees, licensees and tenants of any owner.

"Plat" shall have the meaning assigned to such term in the preamble of this Agreement.

"Perimeter Wall" shall mean the walls on the perimeter of Los Jardines.

"Rules and Regulations" or "Los Jardines Rules" shall have the meaning assigned to such term as set forth in Article 5.

"Site Plan" shall mean the Site Development Plan for Building Permit, including the Association Landscaping Plan and Drainage Plan for the Subdivision approved by the City of Albuquerque in the city action No. _____ as amended from time to time.

"Subdivision" shall mean the subdivision known as Los Jardines Subdivision which is subject to this Declaration.

"Subdivision Restrictions" and "Restrictions" shall mean this Declaration including the limitations, easements, restrictions, covenants and conditions set forth herein, as this declaration may from time to time be amended.

ARTICLE 2

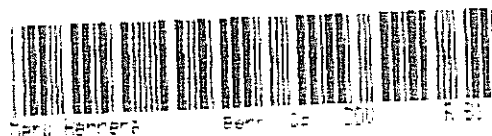
Property Subject to Subdivision Restrictions

2.1 All of the property shown on the Plat is subject to and benefited and burdened by the Restrictions.

ARTICLE 3

Permitted and Prohibited Uses of Property

3.1 Use of Subdivision, Homes and Common Areas. No part of the Subdivision shall be used for any purpose except attached single family residential housing and the common purpose for which the Common Areas were designated. Each Home shall be used as a residence for a single family, its servants and guests. No building shall exceed the height limitation of the City of Albuquerque Zoning Code. The garage shall be considered to be part of the dwelling to which



Barco America

Bern Co 500

6 31 96

2004105000
E105125
Page 3 of 27
67/25/2004 01:57
01-981 Pg-505

it is attached. These Architectural Standards are to be in effect unless and or until modified by the Architectural Control Committee.

3.2 Architectural Standards No building, garage, fence, wall, basement, shed outbuilding or other structure of any kind, whether permanent or temporary, shall be erected, placed or altered on any Lot until construction plans and specifications and a plan showing the location of the structure, has been approved by the Architectural Control Committee as to quality of materials, harmony of external design with existing structures and as to the location of the building with respect to topography, set back requirements and finish grade elevations. All construction, whether addition or remodel, shall be completed within six (6) months from the date of commencement. No lot shall be used for the storage of materials for a period greater than thirty (30) days prior to the start of construction and during the construction period except as noted elsewhere in this Declaration. No external changes to any existing building shall be altered, remodeled or changed until the plans for such change, alteration or remodeling have been approved by the Architectural Control Committee. No garage may be used as a residential area and may not be altered to a size smaller than is necessary to accommodate one (1) full-sized automobile. The garage at 1700 Violetes Rd NW may not be altered to a size smaller than is necessary to accommodate two (2) full-size automobiles.

3.3 Obstruction of Common Areas. There shall be no obstruction of Common Areas. Nothing shall be stored on the Common Areas without the prior consent of the Board of Directors.

3.4 Violation of Laws and Insurance. No owner shall permit anything to be done or kept in such Owner's Home or the Common Areas which will result in the cancellation of insurance on the Common Areas or which would be in violation of any law, ordinance or regulation.

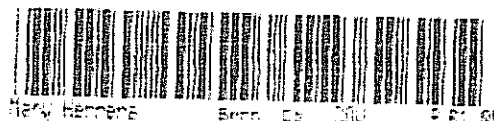
3.5 Trash Disposal. All garbage and trash must be placed in the proper receptacle designated for refuse and recycling collection and no garbage or trash shall be placed in or on any of the Common Areas. All rubbish, trash and garbage shall be regularly removed from the Home and shall not be allowed to accumulate thereon.

3.6 Unattended Personal Property Storage. No baby carriages, bicycles, playpens, wagons, toys, benches, chairs or other articles of personal property shall be left unattended in parking areas, sidewalks or lawns or elsewhere on the Common Areas.

3.7 Home Maintenance. Each Owner shall keep such Owner's home and lot in a good state of preservation, repair and cleanliness.

3.8 Nuisance, Offensive Activities and Noise.

(a) Nuisance. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly or unkempt condition in, on or around his or her Home. No Home shall be used, in whole or in part, for the storage of any property, substance, material or thing that causes or has the potential to cause any of the following (i) such Home to appear to be in any unclean or untidy condition or be obnoxious to the eye (ii) such Home to emit foul or obnoxious odors or (iii) any noise or other condition that will or might disturb the peace, quiet, safety, comfort or security of the Owners or occupants of surrounding



Harv Henners

Barra Co 000

R 61.05

269416562F
5115126
Page: 4 of 27
57/25/2004 01:57P
20-001 Pg-5355

property. No obnoxious or offensive activities shall be carried on within or upon any Home, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any nearby Owners or occupants. There shall not be maintained any plants or animals or devices or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Subdivision.

(b) Activities Causing Unsightly Conditions. The pursuit of hobbies or other activities, including specifically without limiting the generality of the foregoing, the assembly or disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any part of the Subdivision.

3.9 Parking Areas. Unless otherwise authorized by the Association, any and all parking areas within the Subdivision may not be used for any purpose other than parking automobiles. No buses, trucks (except pick-up trucks of one ton or less), trailers, boats, recreational or commercial vehicles shall be parked in driveways. All vehicles must have current license plates and be in operating condition.

3.10 Parking and Traffic Regulations. All owners shall observe and abide by all parking and traffic regulations as posted by the Association or by municipal authorities. Vehicles parked in violation of any such regulations may be towed away at the Owner's sole risk and expense. Vehicles may be parked only in garages, driveways, graveled overflow parking spaces or on the East side of Clavelas St. and the West side of Rosales Rd. Vehicles shall never be parked on any landscaped areas and/or front yards, side yards or rear yards.

3.11 Illegal Parking or Blocking. Parking so as to block sidewalks and driveways shall not be permitted. If any vehicle owned or operated by an Owner, any member of such Owner's family, tenants, guests, invitees or licensees shall be illegally parked or abandoned on the Subdivision the Association shall be held harmless by such Owner for any and all damages or losses that may ensue and any and all rights in connection therewith that the owner or driver may have under the provision of state or local laws and ordinances are hereby expressly waived. The Owner shall indemnify the Association against any liability which may be imposed on the Association as a result of such illegal parking or abandonment and any consequences thereof.

3.12 Campers, Boats and Recreational Vehicles. No campers, boats, marine craft, hovercraft, boat trailers, travel trailers, motor homes, camper bodies, golf carts and any other type of recreational vehicles and non-passenger vehicles, equipment, implements or accessories may be kept on any Lot unless the same are fully enclosed within a garage located on such Lot. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles or other machinery or equipment will be permitted in any driveway or yard.

3.13 Commercial Vehicles. No commercial vehicle with a gross vehicle weight rating greater than one (1) ton will be parked on any street, right-of-way or Lot unless such vehicle is temporarily parked and in use for the construction, maintenance or repair of a residence or Common Areas in the immediate vicinity. No trucks or vehicles of any size which transport inflammatory or explosive cargo may be kept in the Subdivision at any time. No vehicles or

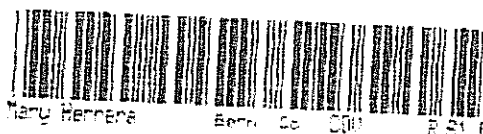
similar equipment may be parked on the landscaped areas of any Lot or Common Areas including but not limited to any front yard, side yard or rear yard.

3.14 Motor Vehicles. No vehicles or similar equipment will be parked or stored in any area visible from any street except passenger automobiles, passenger vans, motorcycles, pick-up trucks and pick-up trucks with attached bed campers that are in operating condition and have current license plates and are in daily use. No abandoned, derelict, inoperable or unlicensed vehicles may be stored or located on any Lot.

3.15 Business Operations. Except as otherwise provided in this Declaration, no industry, business, trade, occupation or profession of any kind, commercial religious, educational or otherwise designed for profit, altruism, exploitation or otherwise shall be conducted, maintained or permitted in or from any Home or on any other part of the Subdivision; provided that an Owner or occupant residing in a Home may conduct business activities within the Home so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Home; (b) the business activity conforms to all zoning requirements for the Subdivision; (c) the business activity does not involve persons coming into the Subdivision who do not reside in the Subdivision or door-to-door solicitation of residents of the Subdivision; and (d) the business activity is consistent with the residential character of the Subdivision and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other resident of the Subdivision as may be determined in the sole discretion of the Board.

3.16 Signs. Except for signs permitted by the last sentence of this Paragraph, no signs, including but not limited to sports signs, business or personal signs or other window displays or advertising shall be maintained or permitted on any part of the Subdivision or in any Home. The right is reserved by the Board of Directors or the Managing Agent, to place "For Sale" or "For Lease or Rent" signs on any unsold or unoccupied homes and the right is hereby given to any Mortgagee. In no event will any sign described in this Paragraph be larger than one foot by two feet other than signs which are commercially purchased or those customarily used by licensed real estate brokers in residential transactions. Owners are permitted to post one "For Sale", "For Rent" or "For Lease" sign, signs advertising garage sales and yard sales and signs endorsing political candidates, ballot issues and similar matters which are the subject of upcoming elections or are approved in writing by the Board or its designee; provided that such signs otherwise conform to the requirements of the Paragraph and are removed promptly following the events to which they pertain.

3.17 Leasing. Homes may be leased for residential purposes. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws and Rules and Regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of non-compliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property. Further, no Home shall be used or rented for transient, hotel or motel purposes. The Association shall be notified of any Lease; including the tenant's name and the Owner-Lessor's home or mailing address and shall, upon request, be furnished a copy of such lease to assure compliance with this Paragraph.



Nancy Herrera

Barra Co 000

R 01.69

2004105322

6:18:26

Page 6 of 27

07/28/2004 07:57

07-001 Pg-5355

3.18 Complaints. Complaints regarding the management of the Subdivision or regarding actions of other Owners shall be made in writing to the Managing agent and/or the Board of Directors. No Owner shall direct, supervise or in any manner attempt to assert control over or request favors of any employee of the Managing Agent, the Board of Directors or the Association.

3.19 Landscaping and Exterior Maintenance. All landscaping located within Owner's courtyards will be properly maintained at all times by the Owner. Each Owner will keep all shrubs, trees and plantings of every kind on his Lot cultivated, pruned, free of trash and other unsightly material. All improvements upon any Lot will at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner.

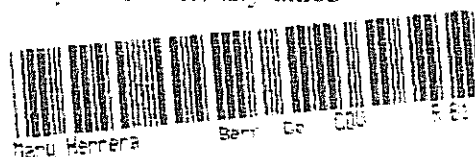
3.20 Window Coverings. Appropriate window covering must be installed by each Owner on all windows of such Owner's Home and must be so maintained thereon at all times. The deadline to install those coverings is sixty (60) days after the close of escrow on the Owner's Home purchase or after move-in, whichever comes first. Foil, sheets, blankets, newspapers and cardboard are prohibited (except during the initial sixty (60) day period.) Appropriate window coverings include curtains, drapes and blinds.

3.21 Exterior Holiday Decorations. Lights or decorations may be erected on the exterior of Homes in commemoration or celebration of publicly observed holidays provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of adjacent Owners by illuminating bedrooms, creating noise or attracting sightseers. All lights and decorations must be removed within thirty (30) days after the holiday has ended. Christmas decorations or lights may not be displayed prior to November 1st of any year. For other holidays, decorations or lights may not be displayed more than thirty (30) days in advance of the holiday.

3.22 Animals. No animals, livestock, horses, insects or poultry of any kind shall be kept, raised or bred in the Subdivision. Dogs, cats and other household pets in reasonable numbers may be kept, providing they are not kept, raised or bred for commercial or hobby breeding purposes. Such household pets must be restrained on a leash or otherwise under the direct control of an individual when in Los Jardines. All city and county animal control ordinances shall be complied with. Owners and/or their guests or assignees who walk their pet in the Common Areas shall collect and remove fecal matter immediately upon elimination by the pet.

3.23 Motorized Vehicles. The operation of motorized vehicles on pathways or trails maintained by the Association is prohibited.

3.24 Towing Vehicles. The Board shall have the right to have any truck, mobile home, travel trailer, tent trailer, camper shell, detached camper, recreational vehicle, boat, trailer or similar equipment or vehicle or any automobile, motorcycle or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Declaration towed away at the sole cost and expense of the owner of the vehicle or equipment without prior notice. Any expenses incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment or the Owner of the Lot from which the vehicle or equipment was towed. If the vehicle or equipment is owned by an Owner, any amounts payable shall be



2004165626
8178:55
Page 7 of 27
07/22/2004 01:57
BK-R01 Pg-5355

secured by the assessment lien and the Association may enforce collection of suit amounts in the same manner provided for in Article 6 of this Declaration for collection of assessments.

3.25 Cloths Drying Facilities. Outside clotheslines or other outside facilities for drying or airing cloths shall not be erected, placed or maintained on any Lot.

3.26 Diseases, Rodents and Insects. No Owner shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious rodents or insects.

3.27 Antennae, Satellite Dishes and Solar Collectors. Except with the written permission of the Committee or as provided herein, no Owner may erect and maintain (a) any direct broadcast satellite ("DBS") antenna greater than one meter (39 inches) in diameter or (b) any multi-channel multi-point distribution service (wireless cable) ("MMDS") antenna greater than one meter (39 inches) in diameter; provided, however, such DBS or MMDS antenna being less than one meter in diameter may be placed in the least conspicuous location on the flat portion of roofs where an acceptable quality signal can be received as long as such DBS or MMDS antenna is screened from view (for aesthetic reasons) of any street, alley, park, Common Area or other public areas unless otherwise approved in writing by the Committee. The installation of any other antenna structure, such as a television broadcast service ("TVBS") antenna, will be mounted in the attic of a residential structure unless written permission is given by the Committee to place such antenna structure in another location. Except with the written permission of the Committee, no solar collector panels may be placed on or around the residential structure. No DBS, MMDS, TVBS or other antennal structure or device will be mounted on or atop the parapet wall of any structure.

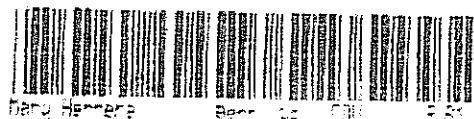
3.28 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use or maintenance of a building, appurtenant structure or other improvements the Association may require for the operation and maintenance of Los Jardines.

ARTICLE 4 Board of Directors

4.1 Number and Qualification. The affairs of the Association shall be governed by a Board of Directors. The Board shall be composed of Owners, Mortgagees or their legal representatives designated by Owners or Mortgagees. The number of Directors on the Board shall be not less than three (3) nor more than five (5) as the Board of Directors may from time to time determine by resolution.

4.2 Powers and Duties. The Board shall have all of the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are permitted by the New Mexico Non-profit Corporation Act and this Declaration.

4.3 Election and Tenure of Office. The Board Members shall be elected for two (2) year terms at the Annual Meeting. Not more than three (3) nor less than two (2) Board Members shall be elected at any Annual Meeting. If any Board Member is unable to complete his term of office,



Nery Herrera

Boon 12 030

5 61 69

2004/05022

6118:29

Page 8 of 27

67/28/2004 61:57P

Ex-RES Pg-0355

the Board shall appoint another Eligible Member of the Association to complete said term. The term of office shall begin immediately after election or appointment.

4.4 Nomination. Any Eligible Member may be nominated prior to the Annual Meeting or from the floor during the meeting.

4.5 Removal or Resignation of Directors. Any Director may be removed from office by a majority vote of the Board. A member of the Board may resign at any time.

4.6 Board Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors, but such meetings shall be held at least once every six (6) months during each fiscal year. Notice of regular meetings of the Board shall be given to each Director directly or by any common conveyance.

4.7 Right of Attendance at Board Meetings. All meetings of the board shall be open to all Eligible Members provided that Members who are not members of the Board may not participate in any deliberation or discussion unless authorized expressly by vote of a majority of a quorum of the Board.

4.8 Quorum. A majority of the Members of the Board shall constitute a quorum.

4.9 Place and Time of Board Meetings. Meetings of the Board shall be held at a designated time and place as designated by a Quorum of the Board.

ARTICLE 5 Officers of the Board of Directors

5.1 Designation. The officers of the Association shall be the President, Vice President, Secretary, Treasurer and At Large Member all of whom shall be Owners and Eligible Members of the Association. One person may hold two or more offices, however, no person may simultaneously hold the positions of President and Secretary.

5.2 Duties of Board Members.

(a) The President shall be the chief executive officer of the Association, preside at all executive meetings of the Association and of the Board and have all of the general powers and duties which are incident to the office of President of a corporation including without limitation the power to appoint committees from among the Owners.

(b) The Vice President shall take the place of the President and perform the duties of the President whenever the President shall be absent or unable to act. If neither the President or Vice President are available or able to act, the Board shall appoint from among its members someone to act as President.

(c) The Secretary shall keep the minutes of all meetings of the Association and the Board, have charge of such books and papers and in general, perform all duties incident to the office of the Secretary of the corporation.



Maru Herrera

Boon Co 200

K 61 60

2004105520
5119109
Page 9 of 27
07/05/2004 01:57P
El-A01 Pg-0305

(d) The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial data. Additionally the Treasurer shall deposit all Moines and other valuable effects in the name of the Board, the Owners, the Association or the Managing Agent, in such depositories as may be designated by the Board.

(e) The At Large Board Member shall service as chairman of the Architectural Committee and such other assignments as the President or the Board shall designate.

ARTICLE 6

Membership and Voting Rights in the Association

6.1 Owners of Lots. Every Owner of a Lot shall be a Member of the Association. Each such Owner shall have the following number of Memberships:

(a) One Membership for each Lot owned by a Member. No Owner, whether one or more persons, shall have more than one (1) Membership per Lot owned. In the event the Owner of a Lot is more than one person or entity, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's spouse, but in no event shall more than one (1) vote for each Membership applicable to a Lot be cast for each Lot. Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable.

6.2 Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such changes and is provided satisfactory proof thereof. The vote for each such Membership must be cast as a unit. In the event that a Membership is owned by more than one (1) person or entity and such owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that he/she was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void. Only Eligible Members shall have the right to vote on any and all matters that come before the Association.

6.3 Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws or Los Jardines Rules as the same may be amended from time to time.

6.4 Transfer of Membership. The rights and obligations of the owner of a Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot as applicable, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be effected by deed, interstate succession, testamentary disposition, foreclosure of a mortgage or deed of record or



Harv. Harrere

Bern. Co. 000

R 61.85

2004105522

6116126

Page 16 of 27

07/25/2004 01:57

EX-AB1 Pg-5355

such other legal process as not in effect or as may hereafter be established under or pursuant to the laws of the State of New Mexico and/or the City of Albuquerque. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot or Parcel shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof.

6.5 Suspension of Voting Rights. Any Member who fails to pay any assessment or other fees or moneys provided herein within thirty (30) days of the due date thereof, shall have all voting rights as provided herein suspended until such amounts plus any accrued interest, attorney's fees and/or collection costs are paid in full.

ARTICLE 7

Organization, Powers and Duties of the Association

7.1 Organization.

(a) The Association has been organized as a non-profit corporation charged with the duties and empowered with the rights set forth herein and in the Articles of Incorporation. The Association's affairs shall be governed by this Declaration, the Articles of Incorporation and the Bylaws.

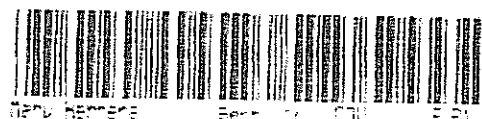
(b) In the event that the Association, as a corporate entity loses its corporate powers or is dissolved, a non-profit, non-incorporated association shall forthwith and without further action or notice, be formed and shall succeed to all the rights and obligations of the Association thereunder until a qualified non-profit corporation is formed. Said non-incorporated association's affairs shall be governed by the laws of the State of New Mexico and, to the extent not inconsistent therewith, by the Declaration, the Articles of Incorporation and the Bylaws.

7.2 Powers and Authority of the Association. The Association shall have all of the powers set forth in its Articles of Incorporation, together with its general powers as a non-profit corporation, subject only to limitations upon the exercise of such powers as are expressly set forth in its Articles of Incorporation, its Bylaws and in this Declaration, to do any and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of the Subdivision Restrictions and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort, safety and general welfare of Owners. The Association shall establish the means and methods of setting and collecting assessments and charges.

(a) Any of the following actions by the Board shall require a majority vote or written assent of the members:

(1) Entering into a contract for the furnishing of goods or services for Common Area and/or Landscape Area or the Association for a term longer than three (3) years, with the exception of prepaid casualty or liability policies not to exceed three (3) years duration, provided that the policy permits short rate cancellation by the insured.

(2) Paying compensation to members of the Board or officers for services performed in the conduct of the Association's business provided that the Board may, without



NEW HAMPSHIRE

Form 101

CON

8-01-05

2004/05/23

21:51:26

Page 11 of 27

67/26/2604 01:57

20-001 20-0000

such vote, cause a member or officer to be reimbursed for approved expenses incurred in carrying on the business of the Association.

(3) Incurring indebtedness of any type in any amount greater than Five Thousand and no/100 Dollars (\$5,000.00).

(b) In fulfilling any of its obligations or duties under the Subdivision Restrictions, including, without limitation, its obligations or duties for the maintenance, repair, operation or administration of the Common Area and/or Landscape Areas, the Association shall have the power and authority to:

(1) Contract and pay for or otherwise provide for the improvement, maintenance, restoration and repair of the Common Area and/or Landscape Areas and all improvements located thereon.

(2) Obtain, maintain and pay for such insurance policies or bonds, whether or not required by this Declaration, as the Association shall deem to be appropriate for the protection or benefit of the Subdivision, the Association, the members of the Board and the Owners.

(3) Incur indebtedness not exceeding the amount specified in subsection (2) above.

(4) Contract and pay for or otherwise provide for such utility services, including, but without limitation, water and electrical services as may from time to time be required.

(5) Contract and pay for or otherwise provide for the services of architects, engineers, attorneys, bookkeepers and certified public accountants and such other provisional and nonprofessional services as the Association deems necessary.

(6) Contract and pay for or otherwise provide for such materials, supplies, furniture, equipment and labor as and to the extent the Association deems necessary.

(7) Pay and discharge any and all lien from time to time placed or imposed upon any Common Area or on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration.

(8) Lease or contract for the use of land and improvements for recreation or other purposes to the extent the Association deems necessary.

(9) Place and maintain upon Common Area and/or Landscape Area such signs as the Association may deem necessary for the identification of the Subdivision and/or roads, the regulation of traffic, including parking, for the health, welfare and safety of owners and other persons.

(c) In fulfilling any of its obligation or in exercising any of its rights with respect to the development, construction, installation or acquisition of a capital improvement, the Association shall have the power and authority to:



HARD HERRERA

BERR. CC. COU

R 51 69

2664185626
E:19126
Page 12 of 27
07/28/2004 09:57
E:R61 Pg:5355

(1) Contract and pay for such Improvements upon such terms and conditions as the Association shall deem appropriate.

(2) Obtain, maintain and pay for such insurance policies or bonds as the Association may deem appropriate for the protection and benefit of the Association, the members of the Board and owners including, but without limitation, builder's risk insurance, additional comprehensive liability insurance, workman's compensation insurance and performance and fidelity bonds.

(3) Incur indebtedness under terms and conditions as provided by this Article.

(4) Contract and pay for the services of architects, engineers, attorneys and certified public accountants and other professional and non-professional services.

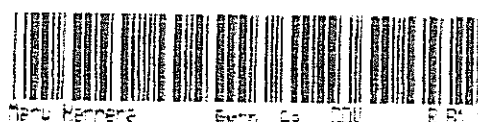
(d) The Association shall exercise control over the Common Area and/or Landscape Area for the purpose of carrying out the purposes of these Restrictions. The Association shall have no authority to mortgage, sell or convey Common Area or any part thereof unless approved by a two-thirds (2/3) vote of the Eligible Members except that the Association shall have the power and authority from time to time without a vote of the members to grant and convey easements or rights of way in, on, over or under any Common Area for the purpose of constructing, erecting, operating and maintaining thereon, therein and thereunder wires, conduits and other equipment for the transmission of electricity and signals for lighting, heating, power, communication, cable television and other purposes and for the necessary attachment in connection therewith; and public and private sewers, storm water ponding areas, storm water drains, storm water ponding areas, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection with the foregoing.

(e) The Association may from time to time and upon such terms and conditions as it may deem appropriate, agree with the governing body of any other subdivision to jointly manage the affairs of the Subdivision, to jointly hire a manager or jointly to engage in other activities not inconsistent with the Subdivision Restrictions.

(f) The Association shall have the right from time to time to pay, compromise or contest any and all taxes and assessments levied against all or any part of the Common Area, any income of or assessed to the Association and upon any personal property belonging to or assessed to the Association.

(g) The Association shall have the power and the authority "but not the duty" from time to time, in its own name, on its own behalf and on the behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Subdivision Restrictions and to enforce, by mandatory injunction or otherwise, all of the provision of this Declaration.

(h) The Board may from time to time and subject to the provisions of this Declaration adopt, amend and repeal rules and regulations (Los Jardines Rules) pertaining to: (i) the management, operation and use of the Common Areas (ii) minimum standards for any



Mary Herrera

Engr. Co. CDU

R B: 09

2004103622
6:19:28
Page: 13 of 27
67/28/2004 6:15:57
Ek-RB: Pg-5255

maintenance of Lots or (iii) the health, safety or welfare of the Owners and residents. In the event of any conflict or inconsistency between the provisions of this Declaration and the Los Jardines Rules, the provisions of this Declaration shall prevail. The Los Jardines Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

7.3 Liability of Members of the Board. No member of the Board shall be personally liable to any Owner or to any other person for any error or omission of the Association, its representatives and employees or the manager provided however that such member has, with the actual knowledge possessed by him/her, acted in good faith.

7.4 Duties and Obligations of the Association.

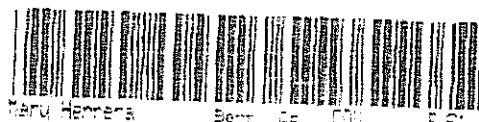
(a) The Association shall have the obligation and duty, subject to the Subdivision Restrictions, to do and perform all matters set out in this Section, for the benefit of the Owners and for the maintenance and improvement of the Subdivision.

(b) The Association shall maintain or provide for the maintenance of the Common Areas, the Landscape Areas and all improvements thereon and the Perimeter Wall (except for damage caused to the Perimeter Wall by the negligence of Owners which shall be paid by the Owners) except for areas within the Subdivision which are maintained by the City. The Association shall maintain or provide for the maintenance of Common Area and Landscape Area and shall keep such vegetation properly trimmed, mowed, cut, watered, fertilized, planted and replaced so that it provides an attractive appearance.

(c) The Association may employ the services of a corporation or individual manager to manage the affairs of the Association and, upon such conditions as are otherwise advisable by the Association, the Association may delegate to the manager any of its powers under the Subdivision Restrictions. No management agreement entered into between the Association and any professional management company shall provide for a term in excess of two (2) years and all such agreements shall permit the Association to terminate for cause upon not more than thirty (30) days prior written and all such agreements shall provide for termination by either party without cause and without payment of a termination fee on written notice of ninety (90) days or less. The professional manager or corporation shall not be a Member of the Association. The Board may choose to manage the Affairs of the Association instead of engaging the services of a corporation or individual manager.

(d) The Association shall obtain and maintain in force such policies of insurance as the Board may determine, including at least the following:

(1) Fidelity Bond: Except as provided in the Bylaws with respect to bonds provided by a professional management company, the Association shall procure and maintain a fidelity bond naming the Association as obligee in an amount equal to the estimated maximum amount of funds to be in the custody or control of the Association or its professional management company, including reserves for replacement and working capital, at any given time during the term of such bond, but in any event in any amount at least equal to three (3) months' aggregate monthly assessments on all Lots plus the sum of all reserve funds. Such fidelity bond shall have those coverage and shall contain those other terms and conditions



Baru Herrera

Baru Herrera

Page 14 of 27

2884105526
01/19/20
Page 14 of 27
07/28/2024 01:57
EX-001 Pg-5355

specified in the Bylaw. The cost of such fidelity bond (if not provided by a professional management company) shall constitute a common expense of the Subdivision.

(2) **Liability Insurance:** The Association shall procure and maintain comprehensive public liability insurance in the amount of at least one million dollar (\$1,000,000.00) per single occurrence for bodily injury, death and property damages suffered by the Public of any Owner and his family, guests, agents, employees or invitees occurring in, on or about the Common Areas. Such Policy shall have those coverage and shall contain those other terms and conditions, including a requirement of written notice to first mortgages of Lots prior to cancellation or major change, specified in the Bylaw.

(e) The Association shall prepare an annual operating statement reflecting the money received by the Association and the expenditures of the Association for each fiscal year and distribute such statement to each member and each Eligible Mortgagee upon request.

(f) The Association may take such action, whether or not expressly authorized by the Subdivision Restrictions, as may reasonably be necessary to enforce or carry out the purposes of the Subdivision Restrictions.

7.5 Annual and Special Meetings.

(a) The annual meeting of the Members shall be held each year in December at a time and location determined by the Board.

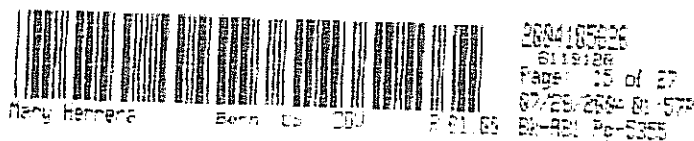
(b) The President shall call a special meeting of the Association Members if so directed by resolution of the Board or upon presentation of a petition signed and presented to the Secretary by Owners holding not less than twenty-five percent (25%) interest of the votes of the Eligible Membership.

(c) The Secretary shall mail or cause to be delivered to each Owner a notice of each meeting of the Owners at least ten (10) but not more than sixty (60) days prior to such meetings, stating the time, place and purpose thereof. The mailing of a notice of meeting shall be considered service of notice.

(d) Any Owner may, in writing, waive notice of any meeting of the Owners, either before or after such meeting. Attendance at the Annual Meeting or any Special Meeting by a Owner, whether in person or by proxy, shall be deemed waiver by such Owner of notice of the time, date and place thereof.

(e) A vote may be cast in person or by proxy. Proxies shall be duly executed and in writing, shall be valid only for the particular meeting designated therein and must be filed with the Secretary before the commencement of the meeting.

(f) The President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting. The President may appoint a person to serve as parliamentarian at any meeting.



7.6 Quorum of Members The presence in person or by proxy of a majority of Eligible Members at the Annual Meeting or a Special Meeting shall constitute a Quorum. In the event a Quorum is not achieved, the Board may, at its discretion, set aside the numerical requirement and declare that there is, in attendance in person or by proxy, a sufficient number of Members to constitute and act as a Quorum.

ARTICLE 8 Funds, Assessments and Delinquency

8.1 Creation of Lien and Personal Obligation for Assessment Each owner of any Lot by the acceptance of a deed or contract of sale therefor, whether or not so expressed in any such deed or contract or other conveyance, is deemed to agree to pay the Association:

- (a) Maintenance and/or Monthly assessments;
- (b) Non-concompliance assessments;
- (c) Assessment for capital improvements; and
- (d) All other fees or other moneys due to the Association from such Owner including any and all legal fees accrued in the collection of delinquencies.

The maintenance assessments, noncompliance assessment and assessment for capital improvements, plus interest of eighteen percent (18) per annum computed monthly at the end of each month, late charges of five dollars (\$5.00) assessed on the eleventh (11th) of the month, costs and attorney's fees shall be a charge against the Lot and shall be a continuing lien upon the Lot against which each such assessment is made and shall also be the personal obligation of the Owner or Owners of such property on the assessment date. The personal obligation to pay assessments shall not pass to successors in title unless expressly assumed by them. The Association shall have the right to adopt rules and regulations setting forth procedures for the purpose of making and collecting the assessment provided herein.

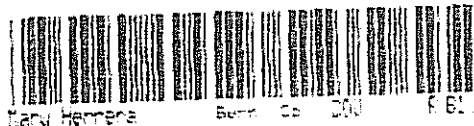
8.2 Operating and Reserve Fund

(a) There shall be an operating fund, into which the Association shall deposit all moneys paid to it and from which the Association shall make disbursements in performing the functions for which the foregoing assessments are levied.

(b) There shall be a reserve fund for major repairs, expenses and replacements and for capital improvement to be built or acquired. Said funds shall be identified and established as needed by the Board.

(c) There shall be a reserve fund for each policy of insurance.

8.3 Maintenance and Assessment



Mary Herrera

Burn Co

200

6 61 98

2004100523
Page 16 of 27
8/25/2004 61.57P
BK-RB: Pg-5355

(a) Within thirty (30) days prior to the commencement of each fiscal year the Association shall estimate the costs and expenses to be incurred by the Association during such year including a reasonable provision for contingencies and reserves for major repair and replacement and shall subtract from such estimate an amount equal to the anticipated balance, exclusive of any reserves for contingencies and reserves for major repair and replacement in the operating fund at the start of such year. The sum or net estimate so determined shall be assessed to all Owners in shares with each Lot representing one (1) share.

(b) If, at any time and from time to time during any fiscal year, the maintenance assessment proves or appears likely to prove inadequate for any reason, including non-payment of any Owner's share thereof, the Association may levy a further maintenance assessment in the amount of such actual or estimated inadequacy which shall be assessed to all Owners apportioned as provided in subsection (a), if approved by two-thirds (2/3) vote of the members.

(c) Maintenance assessments shall be due and payable to the Association when levied or in such installments during the year and on such dates as the Board shall designate. Unless otherwise stipulated by the Board, maintenance assessments are due and payable on or before the first (1st) of the month. A ten (10) day grace period has been established so assessments received by the tenth (10th) of said month shall be deemed as on time.

(d) The Board shall not levy assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceeds ten percent (10%) of the budgeted gross expenses of the Association for the fiscal year and which are not part of such budgeted gross expenses without the voter written consent of the Members.

(e) The maintenance assessment may be increased each year by not more than ten percent (10%) from the previous year without a majority vote of the eligible members. The percent of increase shall be cumulative from year to year so that an increase not used 1 one year may be used in a subsequent year without a vote of the members.

8.4 Noncompliance Assessment. The Association shall levy a noncompliance assessment against any Owner or Owners as a result of whose acts or failure or refusal to act or otherwise comply with the Subdivision Restriction or the Los Jardines Rules or Bylaws, moneys which were expended or are expected to be spent as determined by the Board of Directors from the operating fund by the Association. Such assessment shall be in the amount so expended and shall be due and payable to the Association when levied or in such installments as the Association shall designate.

8.5 Assessments for Capital Improvements. The Association may levy in any year an assessment for paying or recovering, in whole or in part, the cost or proposed cost of acquisition and construction of described capital improvement (whether the improvement constitute real or personal property) in an amount greater than can be included in the maintenance assessment, provided it has been approved by a majority vote of the Eligible Members. Said assessment shall be assessed to Owners in the manner provided elsewhere in this Article.

8.6 Reserves as Trust Funds. Reserve funds for major repairs and replacement and for capital improvements to be built or acquired and for policies of insurance shall be kept segregated from the other moneys held by the Association as trust funds in an account or

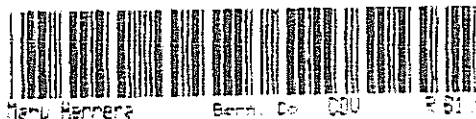
accounts labeled "Reserve Trust Fund" and shall be withdrawn and used only for the purposes designated unless a different or other use is authorized by a majority vote of the Eligible Members.

8.7 Delinquency. Each assessment under this Article shall be the separate, distinct and personal debt and obligation of the owner against whom it is assessed. Any assessment provided for in this Article, which is not paid when due, shall be delinquent. With respect to each assessment not paid within ten (10) days after its due date, the Association may, at its election, require the Owner to pay a sum (late charge) as specified in Article 6.3 (c) to pay the costs of handling the delinquent sum. Such charge shall be considered an additional assessment and collectible with the assessment for which it was charged. If any assessment is not paid on or before the last day of the month assessed: (a) the assessment shall bear interest at the rate specified in Article 6.3 subsection (c) but not to exceed twenty percent (20%); (b) the Association may, at its option, bring an action against the Owner or Owners personally obligated to pay the same and upon compliance with the provisions of its Article to foreclose the lien against the Lot; (c) there shall be added the amount of such assessment the any charges and any and all costs of preparing and filing the complaint in such action; and (d) in the event a judgment is obtained, such judgment shall include interest at the rate provided herein and a reasonable or actual attorney's fee, together with costs of the action. Each Owner vests in the Association or its assigns the right and power to bring all actions at law or lien foreclosure against such Owner or the Owners for the collection of such delinquent assessments. The Association shall have the right to garnish or cause to be garnished from the delinquent Owner's bank account or from the Owner's pay any and all delinquencies within the limits specified by the State of New Mexico and/or the City of Albuquerque.

8.8 Notice of Lien. No action shall be brought to foreclose an assessment lien less than thirty (30) days after the date a notice of claim of Lien is deposited in the United States Mail, certified or registered, postage prepaid, to the Owner or Owners of said lot and a copy thereof is recorded by the Association or its legal representative in the office of the Bernalillo County Clerk; said notice of claim must recite a good and sufficient legal description of any such Lot, the recorded owner or renter owner thereof, the amount claimed (which shall include the assessments, interest charges, costs of attorney's fees recoverable by an action at law) and the name and address of the Association

8.9 Foreclosure Sale. Any such sale provided for above is to be conducted in accordance with the customary practice of the court of the State of New Mexico, applicable to the foreclosure of Mortgages or in any other manner permitted or provided by law. The Association, through its duly authorized agents, shall have the power to bid on the Lot at a foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

8.10 Curing a Default. Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officers of the Association are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the default Owner of a fee, to be determined by the Association, to cover the costs of preparing and filing or recording such release, together with the payment of such other costs, interests or fees as shall have been incurred.



Mary Herrera

Bern. Co

COU

FBI

2864183625
6:19:26
Page: 16 of 27
07/28/2004 01:57P
BX-HSI Pg-0385

8.11 Cumulative Remedies. The assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have there under and by law, including, (i) bringing a suit to recover a money judgment for unpaid assessments, as above provided, and/or (ii) notifying the applicable mortgage company and/or Credit Bureau, (iii) and referring the collection of the assessment to a collection agency.

8.12 Certificate of Payment. The Association shall, upon demand, furnish to any Owner liable for assessments, a certificate in writing signed by an officer of the Board, setting forth whether the assessments on a specified Lot have been paid and the amount of delinquency, in any. No Lot may be sold or otherwise transferred until all delinquencies have been satisfied. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

8.13 Commencement of Annual Assessment. The maintenance assessments provided for in this Article shall commence as to each Lot upon closing. The assessments due for the month in which the sale or transfer of a Lot occurs shall be payable in full in the month accrued and on time by the selling party, the purchasing party or the Realtor in whole and full.

ARTICLE 9

Duties and Responsibilities of Owners

9.1 Owners' Responsibility to Repair and Insure. Each Owner shall be responsible for the maintenance and repair of is Home, his Lot and any Improvements and fixtures and his landscaping, other then landscaping within the Common Area or the Landscape Area which shall be maintained by the Association. Each Owner shall keep such Owner's Home insured against hazards included under standard policies for fire and extended coverage sufficient to cover the replacement cost of the Home and for personal liability, including personal injury and death and property damage, in amounts and under terms which are standard to the Albuquerque area.

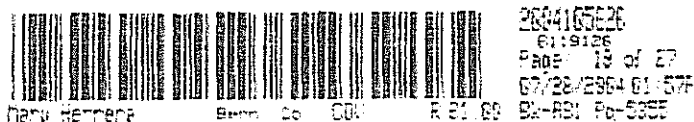
9.2 Joint Maintenance by Owners.

(a) Each wall which is built as part of the original construction of the Subdivision and placed on the dividing line between Lots shall constitute a party wall. Each part of the structure of a building which is shared by more then one dwelling is a common structure. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omission shall apply.

(b) The cost of repair, maintenance and replacement of a party wall, common structure or joint utility shall be shared by the owners who make use of the wall in proportion to such use.

(c) Notwithstanding any other provision of this Article, an Owner who, by his negligent or willful act, causes a party wall or common structure to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(d) The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the Lot and shall pass to such Owner's successors in title.



9.3 Observance of Subdivision Restrictions. Each Owner shall comply with the Subdivision Restrictions, covenants, rules and bylaws and will cause and be responsible for Owner's family, agents, guests, contractors, employees and any person renting or leasing Owner's dwelling to do likewise.

ARTICLE 10

Construction and Architectural Control

10.1 Architectural Control Committee. A committee to be known as the Architectural Control Committee will be established consisting of three (3) members. The chairman of the Architectural Control Committee shall be selected from among the Board of Directors.

(a) The members of the Committee shall be appointed, terminated and/or replaced by the Board of Directors.

(b) The purpose of the Committee is to enforce the architectural and landscape standards of the community and to approve or disapprove plans for improvements proposed for the Lots, Common Area and Landscape Area.

(c) The Committee will act by simple majority vote and will have the authority to delegate its duties or to retain the services of a professional engineer, architect, designer, inspector or other person to assist in the performance of its duties.

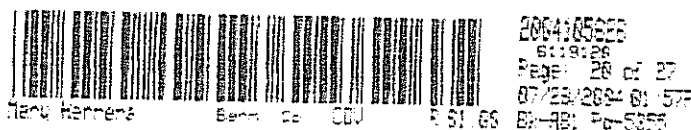
10.2 Construction of Improvements.

(a) Before anyone shall commence on any Lot within the Subdivision the installation of construction of, remodeling of, addition to or alteration of any Improvement (the term Improvement is defined in Article I, and includes but is not limited to fencing and walls) of any nature and before anyone shall re-roof, paint, texture, repaint or re-texture (including re-stucco) the exterior surfaces of any Improvement there shall be submitted to the Committee plans and specifications as follows:

(1) Preliminary or tentative plans and specifications which shall clearly show the nature of the work or installation proposed and the location thereof on the Lot. Such preliminary or tentative plans shall include sufficient description of materials, colors, textures, etc. together with a landscaping plan as shall enable the Committee to evaluate whether the proposed construction, alteration, installation, etc. will harmonize with the motif and style of the Subdivision and be compatible with surround Homes;

(2) After approval of the preliminary or tentative plans, including therein any requirements made by the Committee in the due and proper exercise of its discretion and powers, two complete sets of the final plans and specifications; and

(3) No Improvement of any kind, installation, roofing, exterior painting or texturing (including re-stucco) shall ever be, or permitted to be, erected, constructed, installed, placed or maintained on any Lot within the Subdivision, unless and until the final plans, specifications and elevations therefor shall have received written approval of the Committee. All



such final plans shall include plot plans showing the location on the Lot and all improvements proposed to be constructed and/or installed, planted, placed or maintained on the Lot and shall further include elevations, together with the proposed color schemes and textures for roofs and exteriors thereof, including the material for same.

All proposed work shall comply with applicable City requirements and shall have any and all required City permits (or shall qualify for such permits, to the satisfaction of the Committee). The Committee is authorized to charge not more than one hundred dollars (\$100.00) for review of plans and specifications. Payment of the required charge together with any delinquent assessments shall be a part of, and condition to, the submittal of plans and specifications for Committee approval.

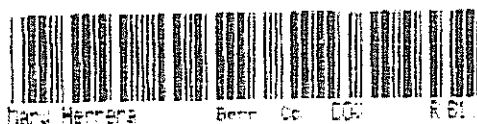
(b) The Committee shall approve or disapprove within thirty (30) days after receipt thereof and specifications which have been submitted to it. One set of plans and specifications, with the Committee's approval or disapproval and requirements endorsed thereon, shall be returned to the applicant and the other copy thereof, with a duplicate endorsement thereon corresponding to the first set, shall be retained in the Committee's files. In the event the Committee shall fail to approve or disapprove the plans and specifications within thirty (30) days after receipt thereof by the Committee, then such plans and specifications shall be deemed disapproved and the submitting Owner shall have a right of immediate appeal to the Board, which shall convene a special meeting to consider such plans and specifications. The Committee shall have the right and power to disapprove any plans, specifications or details submitted to it, if the Committee finds that the plans and specifications are not in accord with all provisions of this Declaration or if a design or color scheme submitted is not in harmony and accord with the prevailing architectural and design features and concepts of the Subdivision or surrounding homes or in the plans and specifications are incomplete. If the submitted plans and specifications are disapproved by the Committee, the submitting Owner shall have a right of immediate appeal to the Board, which shall convene a special meeting to consider such plans and specifications.

(c) Any Improvement or work completed or done without compliance with the procedure set forth in this Article shall be deemed nevertheless to have been done in compliance with such procedure if no action has been commenced to enforce the provisions of the Article against such Improvement or work within one (1) year of its completion provided that the foregoing limitations period shall not apply in the case of any structure, building or other Improvement shall be installed, erected, painted, textured or modified which violates any of the Restrictions.

(d) No Improvements can be made within the Subdivision unless in compliance with the Site Plan and the Trading and Drainage Plan.

10.3 Design Guidelines. The Committee may from time to time adopt design guidelines for review and approval of Improvements. The Committee may grant variances from such design guidelines consistent with the Site Plan.

10.4 Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Committee by any Owner and upon payment therewith to the Association of a reasonable fee to cover costs from time to time to be fixed by the Board, the Committee shall provide owner with an estoppel certificate executed by an Officer of the Board and acknowledged, certifying with



Harry Herrera

Berry Co. COO

R 01 00

2004105523
6118126
Page 21 of 27
07/23/2004 01:57P
BX-R01 Pg-5335

respect to any House owned by said owner, that as of the date thereof either (1) all Improvements and other work made or done upon or within said House by Owner, otherwise, comply with the Declaration or (2) such Improvements or work do not so comply, in which event the certificate shall also (a) justify the non-complying Improvements and work and (b) set forth with particularity the cause or causes for such noncompliance. Any purchaser from the Owner, or mortgagee or other encumbrance shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association and all Owners and such purchaser and mortgagee.

10.5 Liability. Neither the Committee, the Board nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of:

- (a) The approval of any plans, drawings and specifications whether or not defective,
- (b) The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications,
- (c) The development or manner of development of any property within the Subdivision, or
- (d) The execution and recording of an estoppel certificate whether or not the facts therein are correct, provided, however, that the Officer executing the certificate, with the actual knowledge possessed by him, has acted in good faith. Without in any way limiting the generality of the foregoing, the Committee, Board or any member thereof, may, but is not required to, consult with or hear any Owner with respect to any plans, drawings or specifications or any other proposal submitted to it.

ARTICLE 11 Protection of Security Interests

11.1 Application of Assessment to Mortgages. The liens created under the Subdivision Restrictions upon any Lot shall be subject and subordinate to and shall not affect the rights of a mortgagee under any recorded first mortgage upon a Lot made in good faith and for value provided that, after the foreclosure of any such mortgage, the amount of all maintenance and special assessments and all delinquent assessments to the extent such delinquent assessments relate to the expenses incurred after such foreclosure, assessed here under to the purchaser at foreclosure sale, shall become a lien upon such lot upon recordation of a notice thereof with the County Clerk or other appropriate real estate recorder.

11.2 Right to Notice. The Association shall provide all Eligible Mortgagees with timely written notice of any delinquency in the payment of monthly assessments, special assessments or other charges due to Association by the Owner of a Lot which is subject to a first mortgage held by any Eligible Mortgagees and which delinquency remains uncured for a period of sixty (60) days or more.

11.3 Limitation of Enforcement Against Mortgagee. No violation by an Owner of the Subdivision Restrictions or enforcement of the Subdivision Restrictions against an Owner shall



Mary Herrera

Bern Co. CDL

R 51.62

2054165526

6:12:56

Page 22 of 27

67/26/2004 6:15:57P

Er-381 Pg-5255

defeat or render invalid the lien of any mortgagee made in good faith and for value against the property of such Owner, but the Subdivision Restrictions shall be effective against any Owner whose title is acquired by foreclosure, trustee's sale, voluntary conveyance or otherwise.

11.4 Rights of Mortgagee to Information. A mortgagee shall, upon written request, be entitled to inspect the Declaration, Bylaws, Rules and Regulations, books and records of the Association on the same basis as a Member. If a mortgagee furnishes the Association, in writing, with its address, it shall be entitled to receive within a reasonable time, financial statements for the immediately preceding fiscal year, free of charge and shall receive notice of meetings on the same basis as members.

11.5 Application of Subdivision Restrictions. Except as provided in the Article or specifically provided elsewhere in the Subdivision Restrictions, all mortgages and mortgagees are bound by the provisions of the Subdivision Restrictions.

11.6 Collection of Assessment. A mortgagee shall be under no obligation to collect assessments.

ARTICLE 12 Miscellaneous Provisions

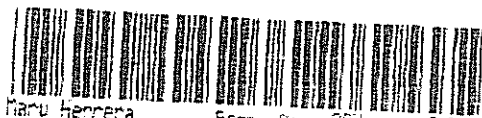
12.1 Amendment or Repeal; Duration.

(a) These Restrictions and any provisions thereof which are in effect with respect to all or part of the Subdivision, may be amended or repealed by occurrence of both of the following:

(1) The approval by a majority of the Eligible Members.

(2) The recordation of a certificate of the Secretary of the Association setting forth, in full, the amendment or amendments so approved, including any portion or portions of its Declaration repealed and certifying that such amendments or repealer have been approved by the required vote or consent of the Owners.

(b) The Declaration shall be effective upon the date of Recording hereof and, as amended from time to time, shall continue in full force and effect until December 31, 2030. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by a quorum of the then Qualified Members casting two-thirds (2/3) of the total votes at an election held for such purpose in person or by proxy within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. The Declaration may likewise be terminated at any time if two thirds (2/3) of the quorum of Qualified Members shall cast in favor of termination at an election held for such purpose. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the County Recorder of Bernalillo County, New Mexico, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration and the covenants contained herein shall have no further force and effect and the Association shall be dissolved pursuant to the terms set forth in its Articles.



Mary Herrera

Bern. Co. COO

4-51-05

2054105622

01/15/15

Page 23 of 27

57/25/2054 01:57

BA-HB: Pg-5375

such limitations, restrictions, covenant or conditions shall not effective the validity or enforceability of any other provision.

(d) The singular shall include the plural and the plural, the singular, unless the context requires contrary and the masculine, feminine and neuter as the context requires.

(e) The Table of Contents and all titles used in the Subdivision Restrictions, including those of Articles and Sections are intended solely for convenience of reference and the same shall not effect the content of these Subdivision Restrictions.

12.4 Lot Splitting; Consolidation.

(a) No Lot within the Subdivision shall be split nor shall two or more Lots within the Subdivision be consolidated into one Lot unless the Board shall have given its written consent.

(b) The Association can require a change in the voting rights and assessment obligation in any Lot split or consolidation to maintain consistency in the assessment and voting rights of such Lot or Lots.

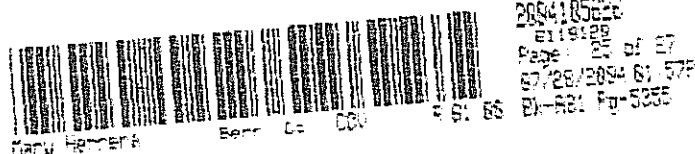
12.5 Obligations of Owners; Avoidance; Termination.

(a) No Owner, through the abandonment of the Owner's Lot, may avoid the burdens or obligations imposed on such Owner by the Subdivision Restrictions.

(b) Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferring Owner shall not be liable for any assessments levied with respect to such Lot after the date such transfer is recorded, provided such transferring Owner notifies the Association of the transfer as provided by the Subdivision Restrictions and no person, after the termination of his status as an Owner and prior to his again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under the Subdivisions Restrictions following the date of such termination.

12.6 No Partition or Severance of Interests. There shall be no partition or severance of any Lot from or within the Subdivision and the Board, Association and Owners shall not seek to partition or sever any part of a Lot in the Subdivision, nor shall the have any right to maintain an action for judicial partition in connection with the Subdivision unless such right is expressly given by the Subdivision Restrictions. This provision shall not prevent the partition of any Lot or Lots held in joint ownership as long as no physical partition takes place and there is no severance from any incident of the Subdivision Restrictions. No Owner shall attempt to sever his Lot from its interest in the Association.

12.7 Notices; Documents; Delivery. Any notice or other document permitted or required by the Subdivision Restrictions to be delivered may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States Mail, postage prepaid, addressed as follows:

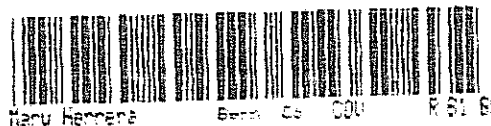


(a) If to an Owner at any Home within the Subdivision owned by the Owner or at such other address given by the Owner to the association in writing. Any such address may be changed from time to time by an Owner by notice in writing delivered to the Association or by the Association by notice in writing delivered to the Owner.

12.8 Ownership of Property. All funds and facilities provided for by the Subdivision Restrictions and all property of any kind held by the Association and derived from assessments of members, proceeds of insurance carried or obtained by the Association, proceeds of bonds payable to the Association or payment received for damage to the Subdivision and any right or interest in any such property shall belong beneficially to the Owners in proportion to each Owners' share of the maintenance assessment and no assessment or proceeds of any assessment shall be considered income to the Association. No person has any right to appropriate or make use of such property, except as provided by the Subdivision Restrictions unless and until there has been a partition or distribution of such property. All such property shall be appurtenant to each Lot in proportion to each Lot's share of the maintenance assessment and may not be severed or separated from any Home and any sale, transfer or conveyance of the beneficial interest of the fee of any Home shall operate to transfer the Owner's rights in such Property without the requirement of any express reference thereto.

12.9 Transfer of Common Area. Upon recording this Declaration, Developer shall be deemed to have transferred and conveyed to the Association and the Association shall accept the Common Areas. The Common areas may be subject to any or all of the following exception, liens and encumbrances:

- (a) The lien of real property taxes and assessments not delinquent;
- (b) Such easements and rights of way as may have been offered for dedication to any political subdivision, public organization or public utility corporation;
- (c) Such easements and rights of way, licenses or rights of use on, over or under all or any part of any such property or structure or Improvements thereon as may be granted to any Owner for the use thereof in accordance with the provisions of these Restrictions;
- (d) Obligations imposed, directly or indirectly, by virtue of any statute, law, ordinance, resolution or regulation of the United States of America, the State of New Mexico or any political subdivision or public organization having jurisdiction over such property or by virtue of any organization or body politic created pursuant to any such statute, law, ordinance or regulation; and
- (e) Any other lien, encumbrance or defect of title of any kind whatsoever (other than of the type which would, at any time, or from time to time, create a lien upon such property to secure an obligation to pay money) which relates to the construction by Developer and its agents of the subdivision improvements for the Subdivision such as curbs, gutters, streets and utilities liens or which would not materially and actually prejudice Owners in their use and enjoyment of such property.



Nary Herrera

Berni Co. COU

R 51 69

2004105626
6118126
Page 26 of 27
07/28/2004 01:57
SH-RE: Pg-5055

12.10 Interpretation of the Declaration. The Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. The Association's construction or interpretation of the provisions hereof by the Declaration and provisions hereof.

12.11 Change of Circumstance. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

ARTICLE 13
Amendments to Bylaws

13.1 New or Amended Bylaws.

(a) New Bylaws may be adopted, repealed or amended by the Members at their annual meeting or at a special meeting called for the purpose of adopting new or repealing or amending old Bylaws.

(b) Whenever an amendment to or new Bylaw is adopted, such amendment or new Bylaw shall be maintained in the corporate books with the original and amended Bylaws, in an appropriate place. If any Bylaw or Bylaws is repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted or written assent was file, shall be stated in said Book.

IN WITNESS WHEREOF, the Association has executed this Declaration on the day and year first above written.

Los Jardines Homeowners Association
a New Mexico Corporation

By: Johnny D. Leslie

STATE OF NEW MEXICO)

COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this 1ST day of JULY, 2004

Notary Public

Suzanne Wood

My Commission Expires:

7-8-05



Mark Herrera

Bern, Co

000

R 01.68

2004165626
6119126
Page: 27 of 27
87/28/2684 81:57F
BX-R81 Pg-5055

such other legal process as not in effect or as may hereafter be established under or pursuant to the laws of the State of New Mexico and/or the City of Albuquerque. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot or Parcel shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof.

6.5 Suspension of Voting Rights. Any Member who fails to pay any assessment or other fees or moneys provided herein within thirty (30) days of the due date thereof, shall have all voting rights as provided herein suspended until such amounts plus any accrued interest, attorney's fees and/or collection costs are paid in full.

ARTICLE 7

Organization, Powers and Duties of the Association

7.1 Organization.

(a) The Association has been organized as a non-profit corporation charged with the duties and empowered with the rights set forth herein and in the Articles of Incorporation. The Association's affairs shall be governed by this Declaration, the Articles of Incorporation and the Bylaws.

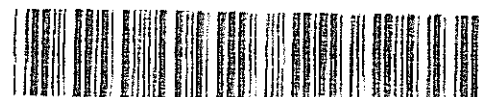
(b) In the event that the Association, as a corporate entity loses its corporate powers or is dissolved, a non-profit, non-incorporated association shall forthwith and without further action or notice, be formed and shall succeed to all the rights and obligations of the Association thereunder until a qualified non-profit corporation is formed. Said non-incorporated association's affairs shall be governed by the laws of the State of New Mexico and, to the extent not inconsistent therewith, by the Declaration, the Articles of Incorporation and the Bylaws.

7.2 Powers and Authority of the Association. The Association shall have all of the powers set forth in its Articles of Incorporation, together with its general powers as a non-profit corporation, subject only to limitations upon the exercise of such powers as are expressly set forth in its Articles of Incorporation, its Bylaws and in this Declaration, to do any and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of the Subdivision Restrictions and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort, safety and general welfare of Owners. The Association shall establish the means and methods of setting and collecting assessments and charges.

(a) Any of the following actions by the Board shall require a majority vote or written assent of the members:

(1) Entering into a contract for the furnishing of goods or services for Common Area and/or Landscape Area or the Association for a term longer than three (3) years, with the exception of prepaid casualty or liability policies not to exceed three (3) years duration, provided that the policy permits short rate cancellation by the insured.

(2) Paying compensation to members of the Board or officers for services performed in the conduct of the Association's business provided that the Board may, without



Mark HERRERA

Serial 24

CSL

8 21 95

2004/05021

2004/05021

Page 11 of 27

6/22/2004 01:57

04-01 Pg-0205

secured by the assessment lien and the Association may enforce collection of said amounts in the same manner provided for in Article 6 of this Declaration for collection of assessments.

3.25 Cloths Drying Facilities. Outside clotheslines or other outside facilities for drying or airing cloths shall not be erected, placed or maintained on any Lot.

3.26 Diseases, Rodents and Insects. No Owner shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious rodents or insects.

3.27 Antennae, Satellite Dishes and Solar Collectors. Except with the written permission of the Committee or as provided herein, no Owner may erect and maintain (a) any direct broadcast satellite ("DBS") antenna greater than one meter (39 inches) in diameter or (b) any multi-channel multi-point distribution service (wireless cable) ("MMDS") antenna greater than one meter (39 inches) in diameter; provided, however, such DBS or MMDS antenna being less than one meter in diameter may be placed in the least conspicuous location on the flat portion of roofs where an acceptable quality signal can be received as long as such DBS or MMDS antenna is screened from view (for aesthetic reasons) of any street, alley, park, Common Area or other public areas unless otherwise approved in writing by the Committee. The installation of any other antenna structure, such as a television broadcast service ("TVBS") antenna, will be mounted in the attic of a residential structure unless written permission is given by the Committee to place such antenna structure in another location. Except with the written permission of the Committee, no solar collector panels may be placed on or around the residential structure. No DBS, MMDS, TVBS or other antennal structure or device will be mounted on or atop the parapet wall of any structure.

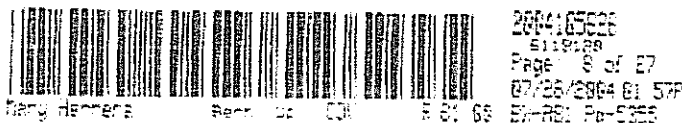
3.28 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use or maintenance of a building, appurtenant structure or other improvements the Association may require for the operation and maintenance of Los Jardines.

ARTICLE 4 Board of Directors

4.1 Number and Qualification. The affairs of the Association shall be governed by a Board of Directors. The Board shall be composed of Owners, Mortgagees or their legal representatives designated by Owners or Mortgagees. The number of Directors on the Board shall be not less than three (3) nor more than five (5) as the Board of Directors may from time to time determine by resolution.

4.2 Powers and Duties. The Board shall have all of the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are permitted by the New Mexico Non-profit Corporation Act and this Declaration.

4.3 Election and Tenure of Office. The Board Members shall be elected for two (2) year terms at the Annual Meeting. Not more than three (3) nor less than two (2) Board Members shall be elected at any Annual Meeting. If any Board Member is unable to complete his term of office,



(d) The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial data. Additionally the Treasurer shall deposit all Moines and other valuable effects in the name of the Board, the Owners, the Association or the Managing Agent, in such depositories as may be designated by the Board.

(e) The At Large Board Member shall service as chairman of the Architectural Committee and such other assignments as the President or the Board shall designate.

ARTICLE 6

Membership and Voting Rights in the Association

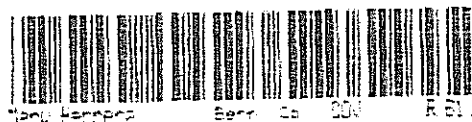
6.1 Owners of Lots. Every Owner of a Lot shall be a Member of the Association. Each such Owner shall have the following number of Memberships:

(a) One Membership for each Lot owned by a Member. No Owner, whether one or more persons, shall have more than one (1) Membership per Lot owned. In the event the Owner of a Lot is more than one person or entity, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's spouse, but in no event shall more than one (1) vote for each Membership applicable to a Lot be cast for each Lot. Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable.

6.2 Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such changes and is provided satisfactory proof thereof. The vote for each such Membership must be cast as a unit. In the event that a Membership is owned by more than one (1) person or entity and such owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that he/she was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void. Only Eligible Members shall have the right to vote on any and all matters that come before the Association.

6.3 Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws or Los Jardines Rules as the same may be amended from time to time.

6.4 Transfer of Membership. The rights and obligations of the owner of a Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot as applicable, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be effected by deed, interstate succession, testamentary disposition, foreclosure of a mortgage or deed of record or



Newspapers

Barr Co 200

R 21.65

2004105555
6115125
Page 16 of 27
07/25/2004 01:57
EA-RE: Pg-5355

